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March 6, 2017

Hon. Ortrie D. Smith
Senior District Judge
Charles Evans Whittaker Courthouse
400 East 9th Street, Room 8552
Kansas City, MO 64106

Pollard v. Remington – Request to Clarify Record

Dear Judge Smith:

Respectfully, for the Court's record, I must provide clarifying information on two topics. First, the *Pollard* fairness hearing transcript issued last week refers to *Kaufman v. American Express*, a case where I served as the court's notice expert (*i.e.*, not for a party). Also, a letter was filed last week by Paul Bland of Public Justice (ECF No. 218), members of which I corresponded with about *Pollard*.

Kaufman v. American Express

I was appointed on Aug. 2, 2012 by Hon. Joan B. Gottschall in *Kaufman v. American Express*, N.D. Ill., Case No. 07-01707, to analyze for the court what went wrong with notice in a $6 million settlement. Among other problems, I found individual notice mailings were rendered ineffective as implemented.[1] And, as opposed to the *Pollard* transcript (p.35, l.17 to p.36, l.4), I consistently advised re-mailings *in addition to* other notice strategies, including emails (*Kaufman* ECF No.'s 420, 421, 426, 430, and 542).[2]

After a new notice program was approved (ECF No. 449), the parties argued that planned re-mailings were not necessary (ECF No. 466). Nonetheless, the Court then required additional notice, and I proposed 1.97 million postal mailings *plus* emails (ECF No. 542).[3] I summarized my plan (ECF No. 581-2), the Court approved it (ECF No. 582), and it was executed.

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[1] The names were deleted, replaced with the word "resident," and sent to households, not individuals.

[2] *See also* my statement in *Kaufman* hearing transcript, ECF No. 436, Jun. 8, 2013, PageID#:5355-5356: "*My position is that I'm anxious to see the mailing list work be performed properly so that I can understand whether we can boost the reach by individual notice to -- substantially. And I'm focused on that because that is the primary and simplest and best way of increasing the response rate. E-mail notice and publication notice, your Honor, I'm gravely concerned that you're going to be disappointed with the response rate if that is what is relied upon.*"

[3] I wrote in ECF No. 542, PageID#:11927: "*Upon Court approval of that Redman Notice, I recommend it be sent by first class mail to all reasonably identifiable Class members following a thorough address correction protocol ... In addition to the mailings, for those reasonably identifiable Class members for whom physical addresses are not known but for whom email addresses are known, a Redman Notice should be sent to them by email.*" Note: "Redman Notice" referred to notice compliant with *Redman v. Radioshack,* 768 F.3d 622 (7th Cir. 2014).

Interaction with Members of Public Justice during *Pollard*

My respect for Arthur H. Bryant, Esq., the Chairman of Public Justice, was a deciding factor in my coming forward in *Pollard*.[4] I received many emails and calls from him discussing his positions on *Pollard* notice and claims results. For example, on July 4, 2016, Mr. Bryant forwarded a February 23, 2016 email he had written to the settling parties suggesting notice tactics,[5] stating: "*We remain committed to ensuring that the new notice plan stimulates as many claims (and prevents as many injuries and deaths) as possible*." And, on September 21, 2016, referring to the claims rate in *Garza v. Sporting Goods*, he stated: "*If this is right, it puts the current and projected claim numbers and rate in Pollard to shame*."

The record should reflect that Mr. Bryant's help was invaluable in advocating for notice strategies beyond those employed by the settling parties. He informed me that on October 28, 2017, he connected objector Denney with counsel for objector Frost.

Also, it should be noted that I exchanged correspondence with Paul Bland after his statements about *Pollard* in his January 4, 2017 testimony to the Advisory Committee on Civil Rules. On February 7, 2017, he indicated his statements did not intend to interfere in *Pollard,* and that a Public Justice board member/partner of a *Pollard* Class Counsel firm played no role.

For completeness and clarity of the record, I ask that you consider filing this letter into the *Pollard* record. If the Court would prefer that I convert this letter to an affidavit, and/or provide any additional supporting documents, I will do so. I respectfully thank you for your attention.

Sincerely,

Todd B. Hilsee
Principal

[4] I have known and respected Mr. Bryant in his Public Justice capacity for some 22 years, but I am not a social acquaintance. I am a contributor to Public Justice.

[5] For example, Mr. Bryant suggested attention-getting TV, the use of public figures and celebrities, the use of Remington's influence and contacts to urge the gun community to file claims, enlisting hunters' associations, *etc*.